

Private Property Rights vs. the Rights of Public Domain: A Study of the Conflicting Values when Private Property Rights are Abused by Hunters or Fishermen

Ron Walsingham

Abstract

This research project examines traditions and cultures in Florida supporting the rights of private property ownership and the harvest of game or fish, whose ownership is common to all. The conflicts that arise from these deeply held values will be identified and discussed. This study presents the results of a questionnaire administered to wildlife law enforcement officers and interviews conducted with property owners and wildlife resource users throughout the state of Florida. This study will examine, from a current and historical perspective, the steps taken by the Florida Game and Fresh Water Fish Commission to resolve this emotionally charged conflict.

Introduction

Urbanization of the state of Florida is proceeding at a rapid pace. In fact, Florida is currently one of the fastest growing states in our nation. From Florida's Everglades to the rural Northwest Panhandle, communities are affected by this growth and development (Burnett, 1986).

One effect of this rapid growth is alteration of traditional land uses. Undeveloped land, much of which was used by the public for recreation, has been developed to provide for the needs of the populace. Large tracts of land are required when these needs include housing, schools, hospitals, water, sewage, solid waste disposal and prisons, just to mention a few. Communities that were once considered small towns are now population centers with all of the problems associated with a large number of people. One aspect of growth seldom noticed by the urban community is the loss of undeveloped properties, lakes and streams previously available to the public for hunting and fishing.

Prior generations of native Floridians took for granted the availability of areas where hunting and fishing were allowed. They assumed that the opportunity would exist for future generations. However, increased property values resulted in significant acreage being converted from undeveloped forest or timberland to residential areas. The impact of this land use change has resulted in a bitter conflict between property owners and hunters and fishermen.

Property owners are asserting their right to govern the use of their property. This includes protection against irresponsible hunters/fishermen who enter or otherwise use the property of another without permission (Heinz, 1995).

Hunters/fishermen reason that by virtue of the ownership of wildlife (aquatic and wild animal life all-inclusive) having been titled or vested to the state, it is common property. Its value, regardless of physical location, is for the common good of all citizens (Foster, 1995). Therefore, the wildlife classified as "legal game" should be subject to harvest on any property, posted or otherwise.

These two diverse cultures, with their respective, deeply held values, conflict when hunters or fishermen abuse the rights of private property owners. This research examines the status of this conflict in Florida and the prior and current efforts by

government agencies to bring about an acceptable resolution. Ten hunters, five fishermen and thirteen property owners were interviewed to determine what problems occur when hunters or fishermen abuse the rights of private property owners, how the abuses occur and who is affected.

An examination of the relevant Florida laws as well as a written survey were used to determine what legal tools are available to law enforcement personnel to address this problem.

Surprisingly, there is little evidence that this emotionally charged issue has been evaluated for a possible statewide resolution, until 1995.

Articles from rural newspapers account for most of the documentation concerning this conflict. Historical perspective is difficult to locate, except in the archives of the Florida Game and Fresh Water Fish Commission (GFC). Some evidence exists that other states have in the past or are currently experiencing similar problems (Draper, 1995; Hyer, 1995; Moore, 1983).

This is a very real problem that the GFC as well as other law enforcement agencies will be reacting to as the rural areas of Florida become more populated. The challenge for the GFC will be to maintain lawful hunting and fishing opportunities, while providing an acceptable degree of protection for private property rights.

Methods

The mission of the Florida Game and Fresh Water Fish Commission (GFC) is to manage freshwater aquatic life and wild animal life and their habitats to perpetuate a diversity of species with densities and distributions that provide sustained ecological, recreational, scientific, educational, aesthetic and economic benefits. To carry out its mission, the GFC maintains a network of Regional Offices. These offices are strategically situated in Panama City, Lake City, Ocala, Lakeland and West Palm Beach. The Northwest Region is headquartered in Panama City and administers GFC responsibilities in a 16-county area from Escambia County to Jefferson County. The Northeast Region is headquartered in Lake City and is responsible for 16 counties stretching from Nassau County to Levy County. Ocala is the headquarters for the Central Region covering a 12-county area from St. Johns County to Osceola County. Lakeland is the headquarters for the South Region. This region encompasses a 13-county area from Hernando County to Lee County. The Everglades Region is headquartered in West Palm Beach and includes the 10 counties from Indian River County to the Florida Keys. The Division of Law Enforcement in each region is comprised of one major, three captains, seven to nine lieutenants and 37 to 46 wildlife officers.

To assess the significance of the conflict between hunters/fishermen and landowners on a statewide basis, input was needed from each of the five regions. To accomplish this, a structured questionnaire containing 18 questions was developed. The questions were selected to determine how widespread this issue actually is and to identify solutions which may have been overlooked. The survey instrument was formatted to seek responses to specific questions as well as allowing the respondent to comment on the issue from a perspective that only applies to a specific geographical area. No deadline was placed on the return of the instrument. A personal memorandum accompanied each survey from this researcher to the respondent. This

memo outlined the history of this issue as well as the purpose of the survey and encouraged the return of the survey as soon as possible.

The questionnaire contained seven questions that required a narrative response. These seven questions were responsible for most of the omissions or incomplete surveys. The most common omission related to the request for names of citizens to contact for personal interviews. A review of the personnel structure of the GFC was conducted to select the class or level of employee to respond to the survey. The chain of command within the Division of Law Enforcement is quasi-military. That is to say that a military rank is assigned to each position in the ascending management structure. The division director holds the rank of colonel; the assistant director, lieutenant colonel; the bureau chiefs, inspector major; the regional commanders, major; the regional law enforcement supervisors, captain; and the watch commanders, lieutenant. As a first-line supervisor, the watch commander (lieutenant) is the level of management closest to the wildlife officer.

The questionnaire was sent to 41 watch commanders throughout the state of Florida. The lieutenant's rank was chosen not only because it is the first-line supervisor, but it was anticipated that the supervisor would discuss the questions with the wildlife officer. This should provide the field viewpoint. The questionnaire was also sent to the regional commanders in the Northeast, Central, South and Everglades Regions. The commanders' perspective is essential since they would be best qualified to provide an overview of this issue for their respective region. In addition to the questionnaire sent to the regional commanders and watch commanders, 16 wildlife officers received the questionnaire. These officers were randomly selected from the Northwest Region. Due to the volume of public complaints regarding doghunting versus property rights, many wildlife officers in that region have been assigned to temporary duty in the Blackwater Wildlife Management Area (an area where this conflict has recently become heated) or other high complaint areas. Their assignment provided valuable insight into the issue.

The last part of the survey instrument solicited the name of at least one hunter, one fisherman and one landowner that might participate in a personal interview. This approach should provide a non governmental perspective to this issue. It would provide a glimpse of how the affected public views this issue.

The personal interviews were designed to solicit responses to a series of questions directed to determine the impact of this issue on the affected cultures. The interview was also intended to identify the diverse value system employed by the interviewees.

A total of 28 individuals were interviewed from throughout Florida. This included 10 hunters, 5 fishermen and 13 landowners. The same questions were posed to each fisherman, each hunter and each landowner. No follow-up questions were asked.

The relevant Florida Statutes were reviewed to determine if the current Florida laws prohibit any portion of the behavior reportedly exhibited by the abusers. Although the private property issue is being debated in our political system as well as the judicial system, the issues are, for the most part, not directly related to the hunting or fishing influences.

Current literature relating to the issue of private property conflicts involving hunters or fishermen is extremely difficult to find. The issue has been around for many years but was not addressed by the GFC until 1981-1982. Therefore, very little written

literature was found prior to 1981. Research was made more difficult because the GFC records during this time period were not computerized. Most pertinent written material was located in the archives of the GFC. These records proved to be less than comprehensive when viewed for statewide application. Most of the records outline the incidents and agency reaction relative to northwest Florida. Newspaper articles chronicle the conflict that occurred in the Panhandle of Florida during the early 1980s. Publications relating to the topic of this research were reviewed although some, such as the Texas Monthly, did not originate in Florida. The problem had many similarities to the issues that currently exist in Florida. A case study conducted in 1981 in the southern Piedmont area of the state of Virginia was reviewed for similarities. Personnel of the Virginia Department of Fisheries and Wildlife conducted this study.

A case study was conducted in the Northwest Region using officer activity statistics in the Blackwater Wildlife Management Area (WMA) in Okaloosa County. This study involved a review of the GFC files for July 1, 1994, through March 9, 1995, relating to the complaints, citations, warnings and officer hours for the study area. This data was then compared to the complaints, citations, warnings and officer hours for the same time frame during fiscal year 1995-1996.

The reason the Blackwater WMA was chosen for the case study is as follows. In May 1995, the GFC heard testimony from private property owners alleging that hunters were allowing dogs to pursue deer on private property adjacent to the management area. Although the GFC had prohibited the taking of wildlife from public road rights-of-way in 1982, this action did not affect a public hunt area. The roads within a public hunt area are open to hunting. The problem was essentially the same, but the solution applied in 1982 would not resolve the abuses in this case. A series of public meetings were conducted to identify the problem and allow public input into the resolution.

The weakness in the research literature is that most pertains to the Northwest Florida Region. Another bias that might exist is the time of year that the agency personnel received the questionnaire. November through February is the time that problems with dog hunters might be the greatest. Law enforcement officers may be spending a great deal of their time responding to public complaints relative to trespass hunters. This may adversely affect the officer's objectivity toward this entire user group.

Results

Questionnaire

The total number of questionnaires sent out was 61. The total number of questionnaires returned was 49. This represents an 80% return on the questionnaire. The exceptional rate of return should lend substance to the results of this study.

The results of the questionnaire (Appendix A) seem to suggest that the issue of private property abuses inflicted by hunters and fishermen affects each of the five regions within the State of Florida.

Question 1 asked whether landowner/hunter/fishermen conflicts occur in the region. Forty-six of the respondents indicated that conflicts occur frequently or occasionally within their region. Only three of the respondents indicated that conflicts occur seldom or never.

Question 2 asked whether the conflicts involve hunters, fishermen or both. The majority of the respondents indicate that the conflicts involve both. In fact, 31 respondents felt that the conflicts involve both while 17 felt that hunters only were involved.

There are many possibilities regarding the type of abuses that can occur to private property owners. However, the officers' response to Question 3 was not surprising. Every single responding officer, or 49, felt that trespassing was involved in the conflicts.

Question 4 asked if the conflicts are confined to a specific geographical area. This question was intended to more specifically isolate the area of conflict. Thirty-three of the respondents felt that the conflicts were confined to a specific geographical area. Fifteen felt the conflicts were rarely or never confined to a specific geographical area.

Question 5 concerns the officers' interaction with other agencies within the areas of conflict. Thirty-nine officers responded that they do interact with other law enforcement agencies to resolve the conflicts. Only nine of the respondents indicated they did not.

Question 6 was intended to see how significant the interaction with the other agencies really is. Twenty-seven officers indicated they did not have either formal or informal agreements with other agencies to address this issue. Sixteen officers indicated they did have an agreement with other law enforcement agencies.

Question 7 asked the respondent to describe the agreement. Although 24 officers indicated in their responses to Question 6 that they had no agreement with local agencies, the responses to this question indicate otherwise. In fact, 26 officers described some agreement while 23 gave no response. Responses range from formally structured agreements to what could best be described as understandings with other agencies as to how the public complaints would be handled.

Question 8 was intended to document the officers' perception concerning the effectiveness of the agreement. Twenty-one officers felt the agreements were effective, while three felt they were not.

The next portion of the questionnaire asked for suggestions to improve the agreements. Twenty-three officers responded with suggestions to improve the agreements with the local agencies. Surprisingly, four officers who had indicated no application to Questions 6, 7 and 8 gave suggestions to improve agreements with local agencies.

The results of the response to Question 10 indicate that the conflict encompasses multiple counties. Only 5 of the 43 respondents felt that the conflict rarely or never involved more than one county. The officers overwhelmingly indicated that the conflict is more noticeable in the rural areas.

Question 12 is one of the most important parts of the questionnaire. The question solicited opinions as to why hunters and fishermen ignore or abuse the property rights of others. The response from the officers was very enlightening. Forty-seven officers offered opinions as to why hunters and fishermen ignored or

abused the private property rights of others. The diversity of the responses to this question will be addressed in greater detail within the discussion of the findings of this research. Only two officers failed to respond to this question. It is noteworthy to point out that one of the non respondents is assigned to Broward County, one of the most urban counties in Florida.

The respondents were almost evenly divided as to whether the current laws are adequate to address this problem. Twenty-three officers indicated that the current laws were adequate, while 21 felt otherwise. Two respondents were omitted for making more than one response.

Only two officers indicated that there are no areas open to the general public for hunting and fishing. Forty-five officers know of hunting and fishing opportunities within their assigned areas.

Forty-two officers made recommendations to address this issue. The responses reflect the problems and solutions perceived within each of the five regions of the GFC.

More than half the respondents, or 25, made additional comments regarding matters not covered in the questionnaire.

Interviews

Twenty-nine interviews (Appendix B) were conducted with individuals from throughout Florida. All but one were conducted telephonically. The interviewees represented Alachua, Brevard, Charlotte, Escambia, Flagler, Gadsden, Hamilton, Hillsborough, Indian River, Jefferson, Lake, Levy, Madison, Marion, Orange, Pinellas, Santa Rosa and Washington Counties. In fact, each of the five regions was represented in the interviews.

Some interesting observations regarding each of the interview groups are:

The average number of years the hunters have hunted in Florida was 40. The most years was 80 and the least 16. The average number of years the fishermen had been fishing in Florida was 24. The most was 30 and the least 9. The property owners' responses reflect an average of 34 years as the length of time the interviewees have owned property in Florida. The most was 66 and the least 14. The property owners have resided at their current addresses an average of 28 years.

The results of the interviews seem to suggest that abuse of private property rights is perceived as significant in rural Florida. Twenty-four of the interviewees responded that they knew of private property abuses involving hunters or fishermen. Every landowner interviewed reported that they had personally experienced property rights abuses. Most involved hunters or fishermen and were reported to a law enforcement agency. Seven stated that they had been threatened or intimidated by hunters or fishermen who abused their property rights. Surprisingly, only four of the landowners felt that the current laws were inadequate to address this problem. All but two of the landowners reported that their property was posted, either by signs or fencing.

Responses from the hunters and fishermen indicate that most believe there are adequate places open to the public for hunting and fishing. The hunters and fishermen were unanimous in their support of a landowner's right to authorize the taking of game or fish on private property.

Literature/Data Review

The laws of Florida are comprehensive and, considering the volume, should address almost every issue imaginable.

Florida Statute, Chapter 810, titled BURGLARY AND TRESPASS, is clear as to an incident involving a person entering the property of another without being authorized, invited or licensed. This action would be prohibited per the provisions of this chapter. In fact, if the offender is armed with a firearm or other dangerous weapon, during the commission of the offense of trespass on property other than a structure or conveyance, he is guilty of a third degree felony (1994 Supplement to Florida Statutes, 1993).

Some Florida counties have enacted local laws or ordinances to address some issues of abuses by hunters. At least one northwest Florida county has enacted an ordinance that could provide a degree of protection for private property owners. Okaloosa County passed an ordinance that essentially required that animals be under the control and custody of the owner at all times (Ordinance 92-25). This ordinance may deter some hunters from allowing their hunting dogs to enter property that they have no permission to enter. However, as will be discussed later, this appears to be an exceptional ordinance, not common to the rural counties most affected by this issue.

The GFC may exercise regulatory authority concerning wildlife management issues within the State of Florida. The rules and regulations passed by the GFC are documented in Title 39 Florida Administrative Code. These laws are narrowly confined to those issues that clearly affect wildlife (all-inclusive). This is mandated by the provisions of Article IV, Section 9, Florida Constitution. The Florida Constitution states that the Commission's five-member "commission shall exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life, . ." (Florida Wildlife Code, Title 39, 1995). Absent the historical knowledge as to why certain laws were passed by the GFC, one may conclude that the agency has been unresponsive to the abuses that occur to private property owners. However, private property owners have been responsible, at least in part, for the GFC prohibiting road right-of-way hunting and modifying the methods used for taking game on certain public hunt areas (Goodson, 1987).

A virtual range war erupted in Holmes County in 1983 that pitted landowners against hunters. Landowners alleged that groups of rogue hunters were systematically trespassing on their property. According to an article in the Jackson County Floridian, the actions of the hunters forced some farmers to leave their homes in fear. A hunter in northern Holmes County was arrested and charged with aggravated assault when he pointed a firearm at and threatened to shoot a group of property owners (Hunters, farmers, 1983). This incident, combined with a history of complaints from private property owners, led to formal action by the GFC to ban the practice of hunting from the road rights-of-way. According to an article in the Pensacola News-Journal, the action taken in Florida to curb the roadside hunting was indicative of the government's efforts to resolve this emotionally charged issue in other southern states as well. In this case, an Alabama circuit judge issued an injunction, which, among other things, prohibited a band of local hunters from possessing a firearm of any type on land in which they had no legal interest or any public road within the county (Moore, 1983).

Violence erupted again in 1987 when a Washington County resident was attacked by a group of hunters he confronted for recurring property abuses. According

to an article in the Washington County News, the problems revolved around the practice of hunters using free-running dogs to pursue deer (Hunter, landowner controversy heats, 1987). The GFC responded to the public's demand for protection by strengthening the prohibition against right-of-way hunting. This action was intended to allow law enforcement officers more discretion in responding to public complaints.

A weakness within the road-hunting prohibition allowed hunters who hunted on public hunt areas to continue hunting from the road rights-of-way. Hunters using free-running dogs to take deer in the Blackwater Wildlife Management Area exploited this opportunity by abusing the property rights of residents living adjacent to the management area. An article in the Crestview News Leader quoted an attorney, representing a group of property owners in Okaloosa County, whose property bordered the Blackwater area, as he spoke of the group's resolve to protect each person's property rights.

We have a constitutional right to own and enjoy property. It's not a constitutional right to own and run a hunting dog. It's a privilege. We don't oppose them owning dogs or hunting with them so long as it does not infringe on the rights of the property owner (Heinz, 1995, p. 5-A).

The GFC responded in May 1995 by prohibiting the use of free-running dogs for taking deer within the area where the conflicts were occurring.

Once again a neighboring state was focusing attention on a similar problem as the Alabama Conservation Advisory Board met in Gulf Shores, Alabama, on June 17, 1995. The Islander, a Gulf Shores newspaper, reported that property owners and dog-deer hunters faced off to debate regulations affecting deer hunting in several Alabama counties (Hyer, 1995).

In its June 1995 edition, the Texas Monthly reported the vicious determination exhibited by a few individuals who insist on "status quo" hunting. These hunters are resisting prohibitions against using free running dogs to take deer. The article characterizes the east Texas outlaw hunters who have resorted to arson as a viable means to resist the changes thus:

Those who have burned the woods of East Texas possess an almost exotic stupidity, along with a sociopathic ability to rationalize wild violence. They bear little resemblance to the true East Texas sportsman, but like bastard children, they cannot be easily written off. For these are reasons why they exist in this part of the world and have existed here for so long, quietly abhorred by the decent folk and law-abiding hunters who nevertheless turn the other way at the sight of a rogue flame. The reasons are older than the East Texas pines, rooted in a tradition that has outlasted any fire, any flood, any wind of change (Draper, 1995, p. 135).

Data from a study conducted by the Virginia Department of Fisheries and Wildlife personnel suggest that problems landowners in Florida have experienced with hunters are shared by landowners in other parts of our nation. Their study, conducted in 1981, concluded that the most commonly reported forms of property abuses were hunting without landowner permission, releasing dogs on or near property without the owner's permission and littering.

Case Study

A case study was conducted in the Northwest Region of the GFC to evaluate the effectiveness of its efforts to resolve a landowner/hunter conflict within the Blackwater Wildlife Management Area, a 186,475-acre public hunt area, situated in Okaloosa and Santa Rosa Counties. GFC records reflect that wildlife officers documented 3,140 hours in the Blackwater Wildlife Management Area from July 1, 1994, through March 9, 1995. Officers issued 136 citations and 26 warnings, while responding to 35 public complaints for this same time period. The statistics for 1994-95 were compared to the same statistics for July 1, 1995, through March 7, 1996. Wildlife officers reported 5,647.5 hours in the Blackwater Wildlife Management Area during the 1995-96 period. Officers issued 112 citations and 49 warnings and responded to 83 public complaints.

The focus of this paper is on property rights abuses by both hunters and fishermen. The results of the study indicate that conflicts involving fishermen do not command the attention of the law enforcement community nearly as often as hunting, especially in the rural communities. Even when private property abuses involve fishermen, the emotions aren't nearly as elevated. Many appear to be the result of misunderstandings. Some property owners feel that waterfront property ownership conveys a special privilege entitling the owner to total control over state waters bordering their property.

Some conflicts occur as a result of fishermen attempting to continue fishing areas that have been developed. Development is typically followed by restricting access and gaining ingress and egress control over the property.

Native Floridians conjure up images of another Florida and another time, a time when large portions of the state were lush unspoiled jungles with pristine waters and seashores, all of which were teeming with an abundance of fish and wildlife. These are images of a state which may or may not have ever existed. If this semitropical Elysium ever existed, we have to ask when and how did it all end.

Today, in retrospect, we may fix the turning point for Florida's vanished Eden as those years just before, and into, the turn of the century. At a time when the twin assaults of "progress" and "development" were just beginning to gather momentum (Burnett, 1986).

Discussion

It is imperative that a distinction be made between "HUNTERS" and "FISHERMEN," referred to in this study as the abusers of private property rights, and the true "SPORTSMEN." In fiscal year 1994-95 (July 1 - June 30), there were an estimated 362,000 hunters and 1.6 million freshwater fishermen in Florida (Priority issues, 1995). The overwhelming majority of the individuals who hunt and fish in Florida do so in an ethical, nonintrusive manner. Unfortunately, some people, especially non-hunters/non-fishermen, focus on the actions of a minority to form an opinion.

The Florida Game and Fresh Water Fish Commission (GFC) advocates the lawful harvest of game and fish as an effective wildlife management tool. The GFC is restricted as to the regulatory action it may take in response to citizen complaints. Although the behavior of a minority may be grossly irresponsible and may adversely

affect the resource users as a whole, ethical behavior cannot be legislated by the GFC. GFC administrative action must be justified by a clear link to a wildlife species. The only exception may be on public use areas where the GFC has a contractual obligation to perform certain functions. This may include closer, and at times, more restrictive management of the public through the regulatory process.

Florida has experienced unprecedented growth within the last 50 years. This growth trend has resulted in the vast majority of the state's wild animal life, as well as the habitat upon which they depend, occurring on private property. Support from private property owners is, now more than ever, critical if we are to perpetuate our natural resources. A partnership, if you will, must exist between government and the private landowners. The GFC, as a government agency, cannot ignore the demands of the private property rights advocates, any more than it can ignore the poacher's bullet. Both could lead to catastrophic consequences for our natural resources.

To examine the issue of private property rights and the rights of the public to exercise control and, at times, custody over wild animal life, it is essential to understand the diverse positions each culture has assumed. Narrowly and subjectively defined, wild animal life is viewed by many as a tangible asset, common to all citizens, and not the property of an individual landowner upon whose soil it happens to occur. However, the property owner may argue that by virtue of legal ownership he, not the government, is the custodian and perhaps owner, of the animals, domestic or otherwise, occurring on the property to which he holds the deed or title and upon which taxes are paid.

The intrusive actions of a few hunters and fishermen have forced this issue to the forefront in some areas of Florida. Hopefully, the resolution will be found by the moderates from each culture, compromising and cooperating to prevent legislation which might please no one.

The first step in researching this subject was to administer a questionnaire to GFC law enforcement officers from each of the five regions within Florida. The 80% return rate on the questionnaire was surprising, especially in view of the premature assumption that the landowner/hunter/fishermen conflicts were isolated to the north Florida areas. In fact, many of the officers report that the conflicts occur frequently throughout Florida and involve both hunters and fishermen. Although the respondents indicated that both user groups were involved, an assumption must be made that there are times when each user group is less likely to violate property rights.

Fishing is primarily a spring, summer and early fall activity. Although there are exceptions, most fishing takes place during this period of time. The conflicts are less likely to be violent and many involve a misunderstanding regarding property rights. Many waterfront property owners object when individuals fish near their docks and boathouses. This activity may be irritating but, in most instances, it is not unlawful on navigable waters or jurisdictional wetlands. Both are considered public domains. Frustrated property owners complain that the offenders should be arrested for trespassing.

Some of the most attractive areas for development in Florida have been lakes and streams situated near the suburbs of major population centers. A common practice by developers to increase the quantity of waterfront property is the development of "dikes" and "canals." Fishermen frequently use these navigable water bodies for travel or fishing. Many landowners mistakenly believe, or may have been misled to believe,

that these bodies of water are for their exclusive use. Irresponsible operation of vessels or personal watercraft accounts for allegations of private property abuses in some regions of Florida. Excessive speed or the wave action associated with improper vessel operation leads to the establishment of "NO WAKE ZONES," which are, at least partially, intended to provide protection to private property.

Hunting is a fall and winter activity. Private property abuses attributed to hunters have a tendency to be more violent. One obvious reason may be that the participants are generally armed. Another less obvious reason has more to do with the demeanor exhibited by some of the hunters, an almost arrogant response to property owners that appears to exude contempt for anyone who dares to challenge the transgressor's actions. Property owners complain that abusive hunters have remarked that, "Granddad hunted this land, Daddy hunted this land, and me and my sons will hunt this land."

Some landowners are reluctant to confront abusive hunters for fear of reprisals. Many of the affected property owners in rural areas are farmers, ranchers or have land planted in timber. They express fear that irate hunters may resort to arson as a means to discourage reporting property abuses (Draper, 1995). There are other reasons property owners are hesitant to bring criminal charges against abusive hunters. In some communities, the abused and the abusers are actually neighbors. During the hunting season, some communities are split into two camps -- the property owners and the hunters. Another reason the property owners do not pursue criminal charges is hesitancy to become involved in a criminal justice system that they don't understand (Goodson, 1987).

Trespassing is a component of the property abuse problem state wide. The GFC, like many law enforcement agencies, has been reluctant to make independent arrests for trespassing violations. That is to say that the property owner is required to indicate, through an affidavit, a willingness to prosecute the offender. Agencies have experienced incidents where trespassing charges have been dropped by a property owner who was convinced that the individual had "learned their lesson" or was contacted by a relative or mutual acquaintance who convinced them to drop the trespass charges. When the trespass satisfies the criteria necessary for a felony charge, some landowners are unwilling to proceed. There are concerns that this landowner action may, unwittingly, increase the agencies' liability.

Research seems to indicate that conflicts are usually confined to some specific area within a county. An assumption may be made that most counties have certain areas where fishing or hunting may be occurring. These areas may be lakes, streams, waterfront property or undeveloped timberland. In southern Florida, it may include some portions of the Everglades.

The conflicts that occur as a result of private property abuses demand the involvement of many agencies within the criminal justice system. Most of the impact appears to be absorbed by the Sheriff's Departments or the GFC. There are exceptions, I'm sure, but these agencies probably receive the majority of the public calls for assistance. Responses from the officers indicate that some of the larger agencies, by policy, respond to all calls or complaints from the public. No referrals are made to other agencies, except on an as needed basis. Conversely, some of the smaller agencies tend to refer all calls involving hunters or fishermen to the GFC. These were

the exception, however, since there is some degree of interaction in most counties. The agreements between agencies as to who will respond to conflicts involving hunters or fishermen are generally informal. The exceptions occur primarily in southern Florida where large areas are established as "bird sanctuaries." The bird sanctuary status prevents the taking of any species of wildlife within a designated area. Much of Dade County is so designated. Private property abuses occur more often when "dove" hunters trespass on private property to hunt or retrieve game. Another problem occurs when hunters shoot too near homes and "shot" or "spent" shotgun pellets fall onto people or property. The agreements here are perhaps more structured or formalized. Meetings are conducted in some counties so that the response from the agencies is coordinated.

Opinions as to why hunters and fishermen ignore or abuse the property rights of others are varied, to say the least. Many of the respondents felt that one of the primary reasons for the abuses is that the historical freedom to use property is either modified or completely eliminated when property ownership changes. The growth trend in Florida has eternally altered land uses, but many hunters and fishermen refuse to modify their behavior to comply with the new owner's demands. One interesting observation concerns the thought that the typical hunter/fisherman was mentored by a close family member, who also was a hunter/fisherman. It is likely that the values held by the teacher were instilled, just as soundly as the knowledge of the sport. If the father/teacher respected the rights of others, then so will the child/student!

One respondent wrote, "(Squeaking the fence) is an accepted or traditional method of land access for certain groups, often rationalized by misinterpretation of the legal premise that wildlife is held in common, not individual, ownership." Squeaking the fence is an apparent reference to the noise a typical wire fence makes when a person's weight is applied to the rungs or strands of wire. Many people view large landowners with a certain amount of contempt, even today. They believe that game and fish is the common property of the state and as such, may be harvested on any property, posted or otherwise. Perhaps there is some vestige of the old revolutionary, pioneer spirit that is invoked when an average citizen refuses to conform to the demands of those they perceive as the rich or powerful landowner.

This philosophy may seem foreign to many, but consider this: An 18th century English jurist named Blackstone summarized the common law of England in his "Commentaries on the Law of England." The Old English laws reserved the game for "gentlemen" and insured that the poor could neither consume nor interfere with the animals that ravaged their crops. The game was reserved for the upper classes. The upper class land barons were given the right to hunt. In his arguments against the land barons, Blackstone asserted that wild animals are owned by no one, and having no owner, belong to the King. This view suited America at the time of the revolution.

Game was scattered throughout rural areas and inaccessible wilderness. Any policy that restricted hunting to an elite group of landowners would have allowed a substantial resource to remain unused in the wilderness. The practical policy for America was that the owner of the soil had no special right to the wildlife. Wildlife was owned by no one and was therefore common to all. After the revolution, the powers of the King passed with the separation to the original 13 states, where they remain in the 50 states today. From the beginning of our nation, special "privileges" with fish or

wildlife resources have been deemed inconsistent with the "common use" concept (Lenzini, 1992).

Officers cite a failure within the judicial system to properly adjudicate as one reason individuals continue to abuse the rights of others. In some areas, these types of crimes are viewed as "victimless crimes." Many of the officers felt that hunting or fishing privileges should be suspended if an individual is convicted of a crime involving hunting or fishing on private property without landowner permission. This approach, however, would require some means to monitor the purchase of hunting/fishing licenses, that are easily obtained in any Florida county. Theoretically, an individual could have hunting or fishing privileges suspended in one county and simply secure a license in an adjoining county. Officers stated that insufficient or overcrowded public use areas account for some of the property rights abuses.

The officers in the GFC are almost evenly divided as to whether the current laws are adequate to resolve the issue of private property rights violations. Based on their comments, it appears that some of the opinions regarding the adequacy of the current laws are influenced by agency enforcement policy. The laws that govern the behavior and conduct of Florida citizens are voluminous. It would seem that there should be law to address every conceivable act or omission. However, there appears to be a void in the state laws concerning trespass hunting dogs. A property rights advocacy group formed in April 1995 in Okaloosa County, Florida, noted this inadequacy within the state laws. The organization, Northwest Florida Rural Property Owners Association, is considering proposing changes to state laws that would govern the issue of controlling hunting dogs (Heinz, 1995).

In 1983, the GFC responded to a violent confrontation in Holmes County between a group of deer-dog hunters and property owners by prohibiting the taking of wildlife from the road rights-of-way. In 1987, the GFC responded to a violent confrontation in Washington County between a group of deer-dog hunters and property owners by strengthening the prohibition against taking wildlife from the road rights-of-way. In 1995, the GFC responded before the confrontation became violent in Okaloosa County. Establishing dialogue with the individuals involved in the conflict during the early stages of the confrontations combined with the establishment of a "NO DOG HUNTING" area appear to have eased the tensions, at least for the present time. The long term solution to this problem is likely to be much more evasive.

The action taken by the GFC to establish a 28,000-acre "NO DOG HUNTING" area in the Blackwater Wildlife Management Area required a substantial commitment from the GFC's Division of Law Enforcement. Modification of the traditional hunting methods within this area, i.e., no dogs, was resisted by some of the hunters. To insure the success of the new law prohibiting the use of dogs in this area, special law enforcement operations were conducted. This included covert investigations as well as saturation patrol details involving the use of marked patrol vehicles, K-9s and aircraft.

A comparison of officer activity within the Blackwater area during the 1994-95 general hunting season and the 1995-96 season reflects an increase in the number of hours dedicated to this area, while the arrests or number of citations actually declined by 18%. There are at least two possible explanations for this occurrence. First of all, the officers were concentrated in the newly established dog free hunt area during the 1995-96 season (approximately 28,000 acres). During the 1994-95 season, the officers

were patrolling the entire Blackwater area (approximately 186,475 acres), which resulted in more public contacts. The second explanation concerns the deterrent value of high visibility saturation patrols within a relatively small area. No doubt many crimes were prevented by the mere presence of wildlife officers.

Public complaints increased from 35 during the 1994-95 season to 83 during the 1995-96 season. This represents a 137% increase in complaints. On the surface this might appear to indicate a significant increase in the incidence of crime within the study area. However, the violations most often reported by the public would not have been prohibited acts during the 1994-95 season. It is noteworthy to point out that the citizens in the study area formed an organization that encouraged members to report incidents of suspected abuse by hunters. This might account for a substantial number of the complaints.

The GFC has met with individual hunters and landowners as well as groups of hunters and landowners to seek solutions to this problem. This interaction will be critical if these diverse cultures are to coexist.

The interviews provided a citizen's perspective of this issue. The cultures, although diverse, are consistent in their view concerning the right of a property owner to approve the harvest of game or fish on their property. This is interesting considering that nine out of ten or 90% of the hunters responded that they knew of instances where hunters or hunting dogs had entered private property, without the owner's permission. One interviewee stated that dog hunters do not consider the practice of allowing free running dogs to enter private property an abuse of property rights if no tangible damage results. The hunters reasoned that the dogs will be on the property for only a short time if uninterrupted by the property owner. One dog hunter acknowledged that, once released, the hunter has little control over the dog's travel. Other considerations which influence the decision to terminate the hunt or allow the dogs to continue the chase include the relative size of the deer or the deer's antlers, the legal status of the quarry and the likelihood of harvesting the game or retrieving the dogs within a reasonable amount of time. The likelihood of apprehension, should the chase result in some unlawful act, appears to be a consideration within some of the less ethical hunting groups.

The landowners gave graphic accounts of abusive incidents ranging from assaults to property destruction. The most alarming factor to emerge during this research is the fear that some landowners have for reprisal or retribution against them or their property should they object to the continuing abuses by a few of the dog hunting groups. Whether imagined or real, this perception is difficult to understand!

This is a social issue that involves cultures, traditions and rights. The values are deeply ingrained within these diverse cultures and, at first glance, may be perceived as benign. Closer observation reveals a conflict that has become so emotionally charged that an effective resolution may be difficult to achieve. The action taken by the GFC is intended to de-escalate a potentially violent conflict that threatens a time-honored tradition in Florida. Fishing and hunting have occurred in Florida for many, many years.

More restrictive action may be required if the conflicts continue, in spite of the efforts of the GFC. The GFC cannot allow the irresponsible actions of a few to bring about the total cessation of lawful hunting or fishing in Florida. In the final analysis, property rights will prevail over the privileges enjoyed by the hunting and fishing

enthusiasts. These are not the only choices! Government has a responsibility to take positive action which will prevent an apocalyptic collision between these deeply held values.

Major Ron Walsingham began his career with the Florida Game and Fresh Water Fish Commission in 1972 as a Wildlife Officer in Hernando County. He is currently the Commander of the Northwest Region of Florida, responsible for the administration of Commission law enforcement operations in 16 counties in the Florida panhandle. His professional accomplishments include receipt of the Distinguished Service Citation, the Commission's highest award. He has also been selected as Wildlife Officer of the Year. Ron serves as vice chairman of the Criminal Justice Advisory Council for Gulf Coast Community College.

References

- Bromley, P. T., & Hauser, T. G., Jr. (1984). Hunter access to private lands in Piedmont, Virginia. Proceedings of the Thirty-Eighth Annual Conference, Southeastern Association of Fish and Wildlife Agencies, November 18-21, 1984, New Orleans, Louisiana, 266-271.
- Burnett, G. M. (1986). Florida's Past Vol. 2, People and events that shaped the state. Anglewood, FL: Pineapple Press.
- Carden, E. (1995, March 15). Hunters and landowners. Crestview News Leader, pp. 1A, 5A.
- DiSilvestro, R. L. (1993). Reclaiming the last wild places: A new agenda for biodiversity. New York: John Wiley & Sons, Inc.
- Draper, R. (1995, May). Burning down the woods. Texas Monthly, 131-136, 183-188.
- Dunlap, T. R. (1988). Saving America's wildlife. Princeton, NJ: Princeton University Press.
- Egan, T. (1994, December 26). New parks mix public and private, uneasily. The New York Times, Late Edition - Final, Sec: 1 National Desk, p. 1.
- Florida Wildlife Code, Title 39, Article IV, Section 9, Game and Fresh Water Fish Commission, (July 1, 1995).
- Foster, D. (1995, August 13). Private rights vs. the common good. Gainesville Sun, pp. 1G, 4G.
- Free-running dogs sought to be stopped. (1987, March 4). Holmes County Advertiser, pp. 1, 14.
- Goodson, B. (1987, March 4). Road hunting enforcement report, 1-3.
- Heinz, C. (1995, May 24). Property owners group forms. Crestview News Leader, p. 5A.
- Horvit, M. (1987, January 22). Friction between hunters, landowners sparks worry. The Panama City News Herald, pp. 1C-2C.
- Hunter, C. G. (1987). A workable approach to houndsman-trapper relationships. Proceedings of the Forty-First Annual Conference, Southeastern Association of Fish and Wildlife Agencies, October 4-7, 1987, Mobile, Alabama, 524-527.
- Hunter, landowner controversy heats up. (1987, January 26). Washington County News, pp. 1, 9.

Hunters, farmers in 'range war'. (1983, January 25). Jackson County Floridian, p. # not available.

Hunting controversy. (1987, February 16). Washington County News, p. 1.

Hyer, B. (1995, June 28). Outdoor enthusiasts voice opinions during conservation meeting. The Islander, p. 1A.

Land group blasts Mitchell. (1987, November 16). Washington County News, p. 1.

Lenzini, P. A. (1992). The evolution of wildlife law in the United States. First Governor's Symposium on North America's Hunting Heritage, Bozeman, Montana, July 16, 1992, 1-24.

McGuire, R. (1995, August 15). Property rights and the food supply. Vital Speeches of the Day, pp. 657-661.

Moore, C. (1983, August 21). Hunters rally against Alabama county's 'unfair' injunction. The Pensacola News-Journal, p. 10B.

1994 Supplement to Florida Statutes 1993, Chapter 810, Burglary and Trespass, pp. 2117-2118.

Ordinance No. 92-25, An Okaloosa County Animal Ordinance.

Pedreira, D. (1995, October 17). Study says water district was warned of pumping consequences. Tampa Tribune, pp. 1, 3.

Priority issues of the agency strategic plan for the Florida Game and Fresh Water Fish Commission FY 1995-1996 through FY 2000-2001, (December 1995).

Redel, P. B. (1987). S.P.O.R.T.: Ethics for everyone. Proceedings of the Forty-First Annual Conference, Southeastern Association of Fish and Wildlife Agencies, October 4-7, 1987, Mobile, Alabama, 529-532.

Roadside hunting is still problem despite state law. (1987, January 19). Washington County News, pp. 1-2.

Wolf, P. M. (1981). Land in America its value, use, and control. New York: Pantheon Books.

Yates, H. (1995, March 6). The sport of hunting with free running dogs is controversial and endangered due to modern urbanization and public apathy of today's society, 1-17.

Appendix A

Landowner/Hunter/Fisherman Conflict Survey of GFC Personnel

1. Do landowner/hunter/fisherman conflicts occur in your region?
 - Frequently
 - Occasionally
 - Seldom
 - Never

2. Do the conflicts involve:
 - Hunters Only
 - Fishermen Only
 - Hunters and Fishermen

3. Do the conflicts involve trespassing?
 - Always
 - Most of the time
 - Sometimes
 - Rarely
 - Never

4. Are the conflicts confined to a specific geographical area?
 - Always
 - Most of the time
 - Sometimes
 - Rarely
 - Never

5. Do you interact with local law enforcement agencies in the areas where the conflicts occur?
 - Always
 - Most of the time
 - Sometimes
 - Rarely
 - Never

6. Do you have formal or informal agreements with the local law enforcement agencies to address this issue?

- Yes
- No

7. If “yes”, please describe your agreement:

8. How effective have these agreements been in dealing with this problem?

- Very effective
- Somewhat effective
- Not effective

9. What suggestions would you make to improve these agreements?

10. Does the area of conflict encompass more than one county?

- Always
- Most of the time
- Sometimes
- Rarely
- Never

11. Is the conflict more intense/noticeable in:

- Rural areas
- Urban areas

12. In your opinion, why do hunters and fishermen ignore or abuse the private property rights of others?

13. Do you agree that the current laws are adequate to address the problem of private property rights abuses by hunters or fishermen?

- Strongly agree
- Agree
- No opinion
- Disagree
- Strongly disagree

14. Are there areas open to the general public to hunt and fish in your region?

- Yes
- No

15. What would you recommend to properly address this issue?

16. Are there comments you could make that have not been covered in this questionnaire?

17. Are there other agencies or administrators who should be contacted to obtain information about this issue? If so, please list them.

18. Please list at least one landowner, hunter and fisherman that I might contact for a personal interview regarding this subject.

Landowner Name _____
Address _____
Address _____
Phone # _____

Hunter Name _____
Address _____
Address _____
Phone # _____

Fisherman Name _____
Address _____
Address _____
Phone # _____

Appendix B

Hunter Interview

1. How long have you hunted in Florida?
2. What game species do you hunt most often?
3. Do you hunt most often on private property or public property (wildlife management areas)?
4. Do you feel there are adequate places in Florida open to the public for hunting?
5. Do you hunt with dogs?
6. Do you know of instances where individuals entered property without permission to hunt or retrieve hunting dogs?
7. Do you know of instances where hunting dogs entered property that the owner did not have permission to enter?
8. Do you feel that the public should be allowed to harvest state owned game and fish on private property without the property owner's permission?
9. Do you own property in Florida?
10. Do you hunt on your own property?
11. What county do you hunt in most often?

Fishermen Interview

1. How long have you been fishing in Florida?
2. Do you fish most often in fresh water or salt water?
3. Do you feel there are adequate places open to the public for fishing in Florida?
4. Do you most often fish on public or private waters?
5. What county do you most often fish?
6. Do you know of instances where individuals have entered property without permission for the purpose of fishing?
7. Do you feel that the public should be allowed to harvest state owned game or fish on private property without the property owner's permission?
8. Do you own property in Florida?

Landowner Interview

1. How long have you owned property in Florida?
2. Do you own property other than that which you reside?
3. How long have you resided on the property you currently reside on?
4. Do you own more than 100 acres of land?
5. Is your property more rural or more urban?
6. Is your property posted?
7. What county is your property situated in?
8. Have you experienced problems with individuals trespassing on your private property?
9. Have there been any incidents where an individual entered your property without your permission to hunt or fish?
10. Have you ever been threatened or intimidated by hunters or fishermen who abused your property rights?
11. Have you reported any property rights violations to law enforcement officials within the last five years that involved hunters or fishermen?
12. Did the responding agency (law enforcement official) adequately address your problem?
13. Were there reoccurrences after you reported the incident(s) involving the same individual(s).
14. Do you feel that the laws are adequate to address this problem?
15. Is there anything you could add that I have not specifically asked relating to this problem?